

1 Stacy Scheff
LAW OFFICE OF STACY SCHEFF
2 P.O. Box 40611, Tucson, AZ 85717-0611
(520) 471-8333 • FAX (520) 300-8033
3 stacy.scheff@gmail.com
State Bar No. 028364
4 *Counsel for Plaintiff*

5 **DISTRICT COURT FOR THE UNITED STATES**
6 **DISTRICT OF ARIZONA**

7 Keith Raniere,

8 Plaintiff,

9 v.

10 Merrick Garland, US Attorney General;
Collette S. Peters, Director, Federal
Bureau of Prisons; Warden USP Tucson,
Anthony Gallion, (all in their official
11 capacities),

12 Defendants

Case No.: 4:22-cv-00561-JCH-PSOT

**APPLICATION FOR ENTRY OF
DEFAULT JUDGMENT – WARDEN
MARK GUTIERREZ**

13 Plaintiff, pursuant to Fed.R.Civ.P. 55(a), (b)(2) & (d), moves for entry of default
14 against Defendant Warden Mark Gutierrez.

15 **I. BACKGROUND**

16 On December 16, 2022, Plaintiff initiated this action. Doc. 1. On January 4,
17 2023, the Court entered its Screening Order pursuant to 28 U.S.C. § 1915A(a). Doc. 6.
18 The Order states,

19 “[A] complaint must contain sufficient factual matter,
accepted as true, to ‘state a claim to relief that is plausible on
its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550
20 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff
pleads factual content that allows the court to draw the
21 reasonable inference that the defendant is liable for the
misconduct alleged.” *Id.* “Determining whether a complaint
22 states a plausible claim for relief [is] . . . a context-specific

task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual allegations may be consistent with a constitutional claim, a court must assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

Doc. 6, p.2.

The Court found that Plaintiff has stated a claim against all Defendants, and ordered Plaintiff to serve each one individually. Doc. 6, p.4. The Court ordered all Defendants to respond to the Motion for Preliminary Injunction within 21 days of being served. Doc. 6, p.5. On January 25, 2023, Plaintiff filed his Affidavit of Service for each Defendant. Doc. 9.

The Affidavit shows that Defendant Mark Gutierrez was served with the Complaint, Motion for Preliminary Injunction, Screening Order, and Summons on January 12, 2023. Doc. 9, p.1. Twenty-one days from January 12, 2023 was Thursday, February 2, 2023. No response was filed.

II. Law & Argument.

F.R.Civ.P. 55 states in relevant part:

(a) ENTERING A DEFAULT. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default...

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served

1 with written notice of the application at least 7 days before
2 the hearing. The court may conduct hearings or make referrals
— preserving any federal statutory right to a jury trial—
3 when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter...

5 (d) JUDGMENT AGAINST THE UNITED STATES. A
6 default judgment may be entered against the United States, its
7 officers, or its agencies only if the claimant establishes a
claim or right to relief by evidence that satisfies the court.

8 Here, Plaintiff has passed screening, therefore he has established a right to
9 affirmative relief by evidence that satisfies the Court. Plaintiff has established that
10 Defendant Gutierrez has been served, and has failed to answer within the time ordered.

11 **III. Conclusion.**

12 Plaintiff requests that default be entered against Defendant Gutierrez, and issue an
13 Order granting Plaintiff's requested relief in his Complaint and Motion for Preliminary
14 Injunction.

15 DATED this 3rd day of February, 2023 by

16 /s/Stacy Scheff
17 STACY SCHEFF
Attorney for Plaintiff
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